

**Amendment and Response**

Applicant: James F. Pitzen

Serial No.: 10/719,558

Filed: November 21, 2003

Docket No.: M120.250.101 / 59097US002

Title: ADHESIVELY MOUNTED LEVER DEVICE

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**REMARKS**

The following remarks are made in response to the Non-Final Office Action mailed December 19, 2005. In that Office Action, the Examiner rejected claims 1-14 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claims 1, 2, and 14 were rejected under 35 U.S.C. §102(b) as being anticipated by Meeks, U.S. Patent No. 4,352,476 ("Meeks"). Claims 3-10 were rejected under 35 U.S.C. §103(a) as being unpatentable over Meeks taken in view of Frye, U.S. Patent No. 3,241,795 ("Frye"). Claims 1-3 and 9-14 were rejected under 35 U.S.C. §103(a) as being unpatentable over Corcoran et al., U.S. Patent No. 6,393,947 ("Corcoran"), taken in view of Bries et al., U.S. Patent No. 6,231,962 ("Bries"), with regard to claims 1-3 and 9-13, and further in view of Greenfield et al., PCT Publication No. WO 94/11295 ("Greenfield") with regard to claim 14.

With this Response, claims 3, 4, and 10-13 have been cancelled, claims 1, 5, 7, 9, and 14 have been amended, and claims 15-22 have been added. Claims 1, 2, 5-9, and 14-22 are pending in the application and are presented for reconsideration and allowance.

**35 U.S.C. §112 Rejections**

Claims 1-14 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. It is respectfully submitted that the phrase "double-sided stretch releasing adhesive" is supported by and is consistent with the specification. Further, breadth of a claim is not to be equated with indefiniteness. MPEP §2173.04. For at least these reasons, Applicant respectfully submits that claims 1-14 as originally presented fully satisfy the requirements of §112, second paragraph. However, for the sole purpose of expediting prosecution, with this Response, each of the independent claims 1 and 14 have been amended to add "strip" after each recitation of "double-sided stretch releasing adhesive" as supported by the original specification,

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for example, page 4, lines 10-14. In addition, claim 7 has been similarly amended to correct informalities relating to the above-described amendment of claim 1, from which claim 7 depends. These amendments are believed to fully address the rejections under 35 U.S.C. § 112, second paragraph, and the Applicant respectfully requests the rejections under 35 U.S.C. § 112, second paragraph, be withdrawn.

**35 U.S.C. §102 Rejections**

Claim 1 was rejected under 35 U.S.C. §102(b) as being anticipated by Meeks. Amended, independent claim 1 recites a lever device including an elongated body member, a base, and a double-sided stretch releasing adhesive strip attached to the base. The double-sided stretch releasing adhesive strip is configured to temporarily secure the base to a surface. When the base is secured to the surface, the lever device is configured such that the elongated body member pivots about the base to selectively contact the surface. Meeks fails to disclose a lever device having the features recited in claim 1.

Meeks relates to a cable clamp 10 including "a layer of double-sided adhesive tape 16 for attaching the base 12 [of the cable clamp 10] to a workpiece" (Abstract). Although Meeks describes attaching the cable clamp to a workpiece with a double-sided adhesive tape (column 1, lines 64-66; column 2, lines. 30-34), nothing is disclosed in Meeks regarding any desire to or any method to remove the cable clamp from the workpiece. Therefore, Meeks fails to teach use of a releasable adhesive to secure the clamp to a workpiece, much less a "stretch releasing adhesive strip" as recited in amended, independent claim 1.

Moreover, Meeks fails to teach a base pivotally connected with the body member as recited in claim 1. Rather, Meeks utilizes flexible straps 26 and 32 to allow movement of various portions of the clamp relative to one another (See Figures 1, 3, and 4; column 2, lines 45-49). As such, none of the various portions of the clamp 10 disclosed in Meeks are pivotally connected to another one of the portions of clamp 10 where "pivotally" is given its ordinary meaning "of, relating to, or constituting a pivot" where "pivot" is "a shaft or pin on which something turns" (Merriam-Webster's OnLine,

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[www.m-w.com/dictionary](http://www.m-w.com/dictionary)). Otherwise stated, Meeks does not relate to or constitute a shaft or pin about which one of the base or body member turns relative to the other of the base or body member. Accordingly, Meeks fails to teach "a base pivotally connected with said body member" as recited in amended, claim 1.

In addition, Meeks fails to teach that "when said base is secured to said surface, said lever device is configured such that said elongated body member pivots about said base to selectively contact said surface" as recited in claim 1. Rather, even if the base would be considered to pivotally connected with the body member, which Applicant avers it is not, when the base 12 of Meeks is secured to a surface via adhesive 16, the resilient arm 20 is moved about its connection with the base 12 and, but for the cable 40 (Figure 3), would contact the base 12 not the surface to which the base 12 is attached as recited in amended, independent claim 1.

In view of at least the above-described reasons, claim 1 is believed to be allowable over Meeks, and Applicant respectfully requests the withdrawal of the rejection of claim 1 under 35 U.S.C. §102(b).

Claim 2 was also rejected under 35 U.S.C. §102(b) as being anticipated by Meeks. Claim 2 depends from amended, independent claim 1, which is believed to be allowable over Meeks. Therefore, claim 2 is also believed to be allowable over Meeks, and withdrawal of the rejection of claim 2 under 35 U.S.C. §102(b) is respectfully requested.

Claim 14 was rejected under 35 U.S.C. §102(b) as being anticipated by Meeks. Amended, independent claim 14 recites a method of producing torque with a lever device including a rigid and elongated body member that includes a first end portion, a middle portion, and a second end portion. The method includes attaching the body member to a surface using a double-sided stretch releasable adhesive strip. The double-sided stretch releasable adhesive strip is affixed to the middle portion of the body member. The method further includes applying a force to the body member parallel to the surface and perpendicular to the body member to produce torque. Meeks fails to disclose the features of claim 14.

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In particular, as described above with respect to claim 1, Meeks fails to disclose a stretch releasable adhesive strip affixed to the body member. Further, the adhesive 16 disclosed in Meeks is attached to an end of clamp 10, not a middle portion thereof as recited in claim 14. In addition, the force applied in Meeks to rotate lever 28 is applied to move lever 28 toward the base 12. Therefore, the force in Meeks is not applied parallel to a surface to which the clamp is affixed as recited in claim 14. For at least these reasons, the features of claim 14 are not disclosed in Meeks. Therefore, claim 14 is believed to be allowable over Meeks, and the rejection of claim 14 under 35 U.S.C. §102(b) is respectfully requested to be withdrawn.

**35 U.S.C. §103 Rejections**

Claims 5-9 were rejected under 35 U.S.C. §103(a) as being unpatentable over Meeks in view of Frye. As described above, Meeks fails to disclose the features of amended, independent claim 1 from which each of claims 5-9 depends. The addition of Frye fails to alter the analysis. Frye relates to an article holding device having "a removable pressure responsive self adhesive characteristic" (column 1, lines 8-16). Frye further discloses that "[w]hen it is desired to remove the member 19, it is necessary only to raise a small peripheral portion and the whole device will readily come free" (column 3, lines 17-19). As such, the adhesive of Frye releases when a portion of the member 19 to which the adhesive is attached is pulled from the surface. In this regard, member 19 is removed from the surface in the conventional manner of applying sufficient force to overcome the strength of the adhesive. The member 19 is thereby removed without stretching the adhesive. With this in mind, the adhesive is not taught or otherwise suggested to be a "stretch releasing adhesive strip" as recited in independent claim 1.

Furthermore, like Meeks, Frye also fails to teach or otherwise suggest the feature of claim 1 reciting "when said base is secured to said surface, said lever device is configured such that said elongated body member pivots about said base to selectively contact said surface." Rather, a main body portion 12 or 41 of Frye is adhered to a

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surface, but no other portions of the devices of Frye are configured to contact the surface to which the main body portions 12 or 41 are attached. For example, in the embodiment of Figures 8 and 9, the outer portion of the clip 45 contacts the inner portion of the clip 45 not the surface 24 to which body portion 41 is secured. Therefore, Frye also fails to teach or otherwise suggest that "when said base is secured to said surface, said lever device is configured such that said elongated body member pivots about said base to selectively contact said surface" as recited in claim 1.

In view of at least the above-described reasons, neither Meeks nor Frye alone or in combination teach or otherwise suggest the features of amended, independent claim 1, from which each of claims 5-9 depends. In addition, claims 5-9 recite additional subject matter not taught or otherwise suggested by Meeks in view of Frye, such as, for example, a head pivotally connected with the first end portion of the body member (claim 5), a second stretch releasing adhesive strip affixed to the head (claim 7), or the base being pivotally connected with a first end portion of the body member (claim 9). Therefore, for at least the above-described reasons, the Applicant respectfully requests the withdrawal of the rejections of claim 5-9 under 35 U.S.C. §103(a) as being unpatentable over Meeks in view of Frye.

Claim 1 was also rejected under 35 U.S.C. §103(a) as being unpatentable over Corcoran in view of Bries. Corcoran in view of Bries fails to teach or otherwise suggest the features of amended, independent claim 1, such as lever device wherein "when said base is secured to said surface, said lever device is configured such that said elongated body member pivots about said base to selectively contact said surface" or with a double-sided stretch releasing adhesive strip.

More specifically, Corcoran fails to teach or otherwise suggest a lever device wherein "when said base is secured to said surface, said lever device is configured such that said elongated body member pivots about said base to selectively contact said surface" as recited in independent claim 1. Corcoran relates to a method and apparatus for loosening a closure from a container (Title). In Corcoran, the only pivoting that occurs is between the arm 80 and the hinge 106, which is coupled with the cap

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gripping means 100 (Figure 5, column 6, lines 1-8). The “surface” to which the cap gripping means 100 is temporarily in contact with is container lid 42c. The arm 80 does not pivot about the hinge 106 to contact the lid 42c. In fact, even if the top surface of lid 42c were extended beyond the boundaries of lid 42c, the interaction between the arm 80 and the vertical post 60 would prevent the arm 80 from contacting such a surface (note that a similar analysis applies to the Corcoran apparatus of Figure 1). Bries fails to alter this analysis as Bries only relates to a removable foam adhesive tape (Title) and does not disclose a base or a member configured to pivot about the base. With the above in mind, Corcoran in view of Bries fails to teach or otherwise suggest a lever device wherein “when said base is secured to said surface, said lever device is configured such that said elongated body member pivots about said base to selectively contact said surface” as recited in independent claim 1.

Moreover, there is no suggestion to combine Corcoran with Bries to teach or suggest the lever device as described in claim 1 having a double-sided stretch releasing adhesive strip. Rather, the cap gripping means 100 of Corcoran interacts with the container lid 42c via a substantially slip resistant pad 104, such as a rubber pad as described with respect to the pad 46 of Figure 1 (column 6, lines 11-13; column 2, line 62 – column 3, line 3; column 4, lines 50-55). The pad is not taught nor is it otherwise stated as being desired for the pad 46, 104 to actually be secured to the lid 42c with an adhesive, much less with a double-sided stretch releasing adhesive strip as recited in claim 1. Rather, using a double-sided stretch releasing adhesive strip rather than a slip resistant pad 104 would further complicate use of the apparatus of Corcoran, by requiring the additional steps of adhering the lid 42c to the pad 104 and subsequently releasing the lid 42c from the pad 104 so that the lid 42c can be replaced on the container or so that the apparatus 20 can be reused with another container. Since Corcoran provides no suggestion or motivation to be combined with the adhesive tape of Bries, a *prima facie* case of obviousness is not believed to have been established (MPEP §2143).

Therefore, for at least the above-described reasons, amended, independent

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claim 1 is believed to be allowable over the cited references, and the withdrawal of the rejection of claim 1 under 35 U.S.C. §103(a) as being unpatentable over Corcoran in view of Bries is respectfully requested to be withdrawn.

Claims 2 and 9 were also rejected under 35 U.S.C. §103(a) as being unpatentable over Corcoran in view of Bries. Claims 2 and 9 each depend from amended, independent claim 1, which, as described above is believed to be allowable over Corcoran in view of Bries. Therefore, claims 2 and 9 are also believed to be allowable over Corcoran in view of Bries, and withdrawal of the rejections of claims 2 and 9 under 35 U.S.C. §103(a) is respectfully requested.

Claim 14 was rejected under 35 U.S.C. §103(a) as being unpatentable over Corcoran in view of Bries and further in view of Greenfield. None of these cited references teach or otherwise suggest a double-sided stretch releasable adhesive strip being affixed to a middle portion of the body member, wherein a force is applied to the body member as recited in claim 14.

In particular, as recited above with respect to claim 1, Corcoran fails to teach combination with another reference to include a double-sided stretch releasable adhesive strip. Further, even if Corcoran replaced the skid resistant pad 104 with such a strip, which Applicant avers there is no suggestion to do, the strip would be attached to the gripping means 100 not the rigid and elongated body member 80 to which force is eventually applied as would be required by the limitations of claim 14. Bries fails to alter this analysis as Bries only relates to a removable foam adhesive tape (Title). Moreover, for similar reasons as described above-with respect to claim 1, there is no suggestion to combine the teachings of Corcoran and Bries to provide a lever device with "double-sided stretch releasable adhesive strip" as recited in claim 14, and therefore, claim 14 is not believed to be obvious over Corcoran in view of Bries.

Greenfield also fails to alter this analysis as the adhesive disclosed therein generally relates to adhesive to attach the base 12 to the cap 15 (page 7, lines 19-21) in the embodiment of Figures 1 and 3, where the base is clearly not an elongated member. Further, Greenfield does not teach or suggest how such adhesive strips are

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used or to where they are attached. As such, Greenfield also fail to teach or suggest adhesive strip affixed to the middle portion of a rigid and elongated body member. In addition, the general disclose of using an adhesive fails to provide the requisite suggestion or motivation to combine the cited references to establish obviousness. More specifically, such combination would still unnecessarily complicate the apparatus of Corcoran. In addition, Greenfield teaches that it is preferred that the base 12 is integrally provided with the cap 15 (page 7, lines 15-16). With this preferred embodiment in mind, the adhesive of Greenfield is likely a permanent adhesive and no suggestion is provided for the disclosed adhesive to be removable in any fashion, much less to be a double-sided stretch releasable adhesive strip as recited in claim 14.

Therefore, for at least the above-described reasons, amended, independent claim 14 is believed to be allowable over the cited references, and withdrawal of the rejection of claim 14 under 35 U.S.C. §103(a) as being unpatentable over Corcoran in view of Bries and further in view of Greenfield is respectfully requested.

**Other Amendments**

The specification and claims 5 and 9 were amended as shown above to address various informalities not related to patentability of the application.

**New Claims**

With this Amendment, new claims 15-22 have been added to recite features that are supported by the originally filed specification. Therefore, no new matter has been added. Each of claims 15-22 depend from either independent claim 1 or independent claim 14, which, as described above, are believed to be allowable. Accordingly, new claims 15-22 are also believed to be allowable.

**CONCLUSION**

In view of the above, Applicant respectfully submits that pending claims 1, 2, 5-9, and 14-22 are in form for allowance and are not taught or suggested by the cited references. Therefore, reconsideration and withdrawal of the rejections and allowance of claims 1, 2, 5-9, and 14-22 are respectfully requested.

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No fees are required under 37 C.F.R. 1.16(b)(c). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 50-0471.

The Examiner is invited to contact the Applicant's representative at the below-listed telephone numbers to facilitate prosecution of this application. Any inquiry regarding this Amendment and Response should be directed to either David B. Patchett at Telephone No. (651) 736-4713, Facsimile No. (651) 736-3833, or Timothy A. Czaja at Telephone No. (612) 573-2004, Facsimile No. (612) 573-2005. In addition, all correspondence should continue to be directed to the following address:

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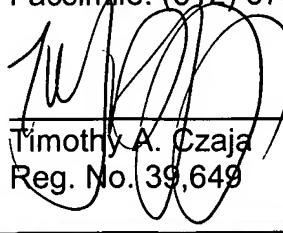
Respectfully submitted,

Roy Stubbs,

By his attorneys,

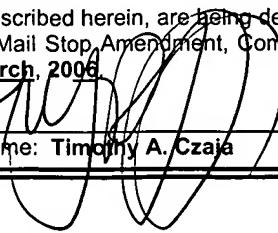
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**CERTIFICATE UNDER 37 C.F.R. 1.8:**

The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 29 day of March, 2006.

By:   
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